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## **Noncitizen Detention: Spatial Strategies of Migrant Precarity in US Immigration and Border Control**

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### **Abstract:**

The United States Bureau of Immigration and Customs Enforcement (ICE) operates the largest confinement system in the country, no small accomplishment in the world's largest prison system. This article analyzes the US immigration detention system as a series of spatial strategies through which state officials seek to manage and redirect transboundary migration. I argue that while detention works to confine, segregate, and categorize migrant bodies, detention is also a performance of state power. As such, it produces effects beyond deportation. The article will first outline how immigration detention both relies upon and extends the US criminal justice system to open up spaces of arbitrary administrative discretion. I then draw on my research on noncitizen detention and visitation programs to demonstrate how detention is more than a fixing of bodies in space; it is a *process* of isolation, criminalization, and marginalization. I argue that detention cannot be subsumed under or explained

by deportation, and that it plays a key role in the production of migrant precarity in current US immigration and border control.

Keywords: Migration, detention, prison, precarity, state power, criminalization, USA.

## **INTRODUCTION**

The United States Bureau of Immigration and Customs Enforcement (ICE) currently detains an average of 34,000 people each day. Nominally considered a civil detention system, ICE detains noncitizens in approximately 250 facilities in all 50 states, making the immigration detention system the largest prison system in the country. In addition, noncitizens charged with immigration-related violations are the fastest-growing group in the federal criminal justice system. Violent crime rates have, in contrast, fallen in recent years (US Federal Bureau of Investigation 2014), so that immigration-related imprisonment represents the most significant growth and change to the US's prison landscape in the last decade. How do we explain this dramatic expansion of the US immigration detention system? The US Congress has not been able to pass new immigration legislation since 1996, but security and counter-terrorism policies have included provisions related to immigration and border enforcement (see Martin 2012a for a detailed review). In addition, Congress has provided ICE and Customs and Border Protection (CBP) with unprecedented funding to expand existing enforcement practices and implement new ones. For example, section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility

Act (IIRIRA) enabled ICE to sign Memoranda of Agreement (or MOAs) with local law enforcement agencies, such as county and city police. These MOAs allowed police officers to run immigration checks on people in county and city jails and identify people of questionable status to ICE. Immigration officials could, if they chose, place a detainer on those people for up to 48 hours, during which time they would interview them about immigration status and transfer them to an immigration detention facility if deemed necessary (Guttin 2010). This program was replaced by the Secure Communities program (SComm) and expanded to 3074 (97%) of US counties by July 2012. Running these biometric background checks through immigration databases, local police stations now filter noncitizens into immigration detention, linking street and federal immigration policing in unprecedented ways (Coleman 2009; Varsanyi et al. 2012).

The federal criminal justice system is also increasingly used to funnel noncitizens into the civil immigration system. In a program called Operation Streamline, groups of noncitizens are charged with immigration-related crimes, usually repeated entry without documents, in federal courts. As of March 2013, immigration-related criminal charges in federal courts rose 22.7% from March 2012, and 67.8% from 2008 (Transactions Records Access Clearinghouse 2013a) and now comprise the majority of all criminal cases filed in federal courts (Transactions Records Access Clearinghouse 2013b). In Operation Streamline trials, migrants are often represented, tried, and sentenced as in

groups, and usually given penalties that trigger deportation and a long-term ban from lawfully entering the United States. Not only has this raised serious concerns about due process of law, but it indicates a linking of federal criminal justice and immigration systems in strategic ways. County jails and federal courts work to move noncitizens through criminal justice processes into immigration detention and, ICE hopes, to deportation. Imprisonment and detention, while technically distinct, have become linked together through administrative and legal processes, working to isolate, contain, and move noncitizens between legal systems and between countries.

The size and scope of the US immigration detention system makes it globally and geopolitically significant, especially affecting countries in Central America and East Asia with whom the US has a long geopolitical and economic history. But immigration detention should not be so easily understood as an exceptionally American problem, as EU's FRONTEX regularly invites experts from US border and immigration agencies to provide guidance to European policy makers, and companies deriving expertise from US contracts consult with European, African, and Asian governments, as well. While a detailed comparison of national detention regimes is beyond the purview of this paper (but see Wilsher 2012), this paper seeks to draw some conceptual entry points from the US case for such future work. In particular, I argue that immigration detention contributes to migrant precarity in specific ways, through processes of

isolation, the linking of criminal justice and immigration systems, and the high cost--financial and emotional--of detention and deportation.

This article describes how imprisonment has become a core spatial strategy in the US's immigration enforcement system. While imprisonment has often been conceptualized as a form of containment, I will show how immigration detention seeks to redirect transboundary migrants and asylum seekers, to deter potential migrants and asylum-seekers, and to forcibly remove certain kinds of noncitizens from the United States. As Dominique Moran (2013b) has argued, imprisonment relies upon specific forms of mobility and the circulation of people, goods, and money between "inside" and "outside." For immigration scholars, detention's primary role is often understood to be the enforcement of *deportation*, a form of forced mobility. Yet for many, detention is part of the admission or entry process. For asylum-seekers claiming asylum at a Port of Entry, which is within their legal rights under international and US law, government suspicion and immediate detention are the first steps in their admission to the United States. Many detained noncitizens have claims to relief under current immigration law, as well. Subsuming detention under deportation accepts US Immigration and Customs Enforcement's representation of detention as a necessary step to enforce immigration law, and misses the wider context in which immigration detention both emerged and continues to operate. Moreover, explaining the detention system as a function of deportation

policies neglects two key elements: the relationship between immigration detention and the US prison system, and the production of migrant precarity.

In the following sections, I contextualize US immigration detention in a broader political economy of imprisonment and show how detention is a spatial strategy of forced mobility that contributes to the production of specific forms of precarity for noncitizens living and working in the United States. To understand how these practices work together to produce migrant precarity, I draw from primary research (interviews, legal and policy documents, participant observation) on immigrant family detention between 2008 and 2011, interviews and participant observation with visitation program participants in 2011, and human rights organization reports on Operation Streamline. No single strategy criminalizes noncitizens; detention itself combines multiple spatial strategies. Detention is, however, one policy embedded in a wider immigration enforcement complex that increasingly uses criminal prosecution to achieve long-term imprisonment, following by detention and permanent banishment from the United States. As the European Union, Australia, and other regions expand detention as a strategy of immigration and border control, this analysis provides conceptual and empirical entry points for unpacking detention's spatialities.

## **1. Conceptualizing detention's spatial practices and the production of migrant precarity**

To understand immigration detention's spatiality, we must ask what work detention performs, through what spatial orderings, networks, and relationships, and for whom. Detention is a particularly *spatial* practice that bounds space in order to prevent bodily mobility (Martin and Mitchelson 2009). Analyzing *how* and *why* detention works requires different analytical starting points, however, because official policy rationales for detention do not explain its effects on those detained, nor do they adequately account for the mundane practices of detention center staff, deportation officers, and migrants themselves. Despite the oft-cited divergence between "policy" and "practice," policy discourses create the conditions of possibility for particular forms of detention. In the case of US immigration law, the specific legal categories of administrative and prosecutorial discretion open up legalized space of action for immigration policy-makers and deportation officers that cannot be challenged in courts. This allows detention center staff and local ICE employees a wide bandwidth of decision-making, a situation that has produced a wide range of practices within and between detention centers (see also Gill 2009 for similar findings in the UK context). In other words, US immigration law and policy *authorizes* immigration policymakers and officers to make a wide range of decisions about individual cases and *constrains* migrants' access to legal processes. To understand this variability in everyday practice, then, one must understand the legal discourses that authorize ICE to detain and deport migrants through a separate legal system unbound to Constitutional norms and procedures.



For this reason, Alison Mountz, et al. (2012) argue that “detention can be conceptualized as a series of processes; and that operating through these processes are a set of temporal and spatial logics that structure the seemingly paradoxical geographies of detention” (2012, 3). In particular, they argue that contemporary migrant detention practices work through intertwined logics of bordering/exclusion and mobility/containment. Detention centers perform many functions (inspection, identity verification, court rulings) that have traditionally been located at border checkpoints. By reconfiguring the geography of bordering practices, detention practices reterritorialize national borders, externalizing them and bringing them into the interior in different contexts (Coleman 2007). In addition, the forced mobility of deportation reaffirms national identity through the process of repatriation. Detention centers are very often remotely located, so that distance works as a spatial strategy of containment. This “exclusion by geographical design” (Mountz 2010) includes, however, other forms of circulation and forced mobility, as immigration authorities transfer migrants between facilities. As Nick Gill (2009) has shown, transfers are used to penalize detained migrants for political actions and prevent detained people from forming bonds with other detainees, service organizations, or case workers. Moran et al. (2012) call this “disciplined mobility,” and they argue that transfers and intra-facility transportation is a key part of the subjectification process for those who are confined. While these processes unfold through distinct embodied practices, they work together to associate noncitizens with prison, criminality, and illegality.

For Moran (2013a, b), tensions between mobility and confinement characterize “the carceral” more broadly. For her, the carceral is more than the space in which people are detained. Rather, detention centers and prisons are a locus of a carceral continuum and a site from which secondary incarceration or collateral effects of imprisonment emanate (Moran 2013b). In other words, detention centers and prisons may bundle the spatial practices of confinement into a spectacular display of states’ power to control bodies, but these spatial practices are mobilized beyond prisons, as well (as Michel Foucault concludes, Foucault 1990). Moreover, detention’s apparent boundedness masks the continual exchange between “inside” and “outside,” particularly the “collateral effects” of imprisonment on families and communities of those inside (Moran 2013 *GeoJournal*). As Gill (2009) has argued, transfers have the intended effect of sanctioning migrants organizing within detention centers, and they also limit asylum organizations’ ability and desire to provide aid to detained people. Thus, spatial practices of disciplined mobility undermine the affective and emotional ties between detained people and family, friends, and support networks who might aid them.

Detention’s disciplinarity works not only through confinement and forced mobility, but by bearing down on networks of care through which detained migrants support themselves (Martin 2011, 2012b). This is true in both sending and receiving countries. Nancy Hiemstra (2012) has found the process to have

dramatic effects on sending communities in Ecuador. The loss of income, savings, and material possessions in the US, combined with the lack of knowledge about where loved ones are located, have significant impacts on the physical and mental health of detained workers' families. For those detained, the uncertainty of transfers and eventual deportation feel like "chaotic geographies" and produces a disorder that conceals the multiple interests at work in the immigration enforcement system (Hiemstra 2013). As a deterrence policy, immigration enforcement practices are engineered to alter migrants' cost-benefit calculations (Martin 2012b), and yet the precarity of life at home encourages them to continue to migrate (Hiemstra 2012). In addition, the stigma of detention and deportation stay with migrants as they attempt to reintegrate "at home." This has been a particular problem for Central American youths deported through anti-gang strategies, as many of them are either directly imprisoned upon return or become targets for vigilantes and other gangs (Zilberg 2010). As a result, deportees live highly circumscribed lives, moving around as little as possible to avoid confrontation. Detention's carcerality reverberates through families' lives, in the US and abroad, and through daily life after detention.

In sum, detention is not a single spatial strategy or practice, nor is its spatiality confined to the detention center itself. What these geographic studies of US immigration enforcement show is that detention is a lived process and a bundle of textual and embodied practices meted out through everyday enactments.

These practices amount to what Mathew Coleman and Austin Kocher (2011) call “migrant incapacitation.” Specifically, they “bring the threat of deportation into the most intimate recesses of immigrant life,” so that migrants are “forced to engage in increasingly tenuous underground means of social reproduction in a society in which they nevertheless labour openly” (Coleman and Kocher 2011, p. 235). Migrant incapacitation is, then, a form of social control, in which some are deported so that others may remain (deGenova 2002). The threat of detention and deportation discourages labor organizing, complaints, and demands for legitimate pay, resulting in a docile working class that very much serves labor market needs for cheap, temporary labor (de Genova 2002; Harrison and Lloyd 2012; McLaughlin and Hennebry forthcoming). Detention and deportation work, in sum, to make an already precarious migrant life more precarious.

I want to expand on the connections between precarity, detention, and imprisonment. Coleman and Kocher’s concept of migrant incapacitation builds upon Ruth Wilson Gilmore’s (2007) analysis of California’s prison system, in which she connects the rise of mass incarceration to urban deindustrialization and rural agricultural crises. She traces how deindustrialization in California’s urban cores produced a wageless working class, at the same time that the restructuring of the agricultural economy created unemployment in rural areas. In Chicago, Jamie Peck and Nik Theodore (2008) have shown that imprisonment has dramatic effects on the urban labor market in these

deindustrialized areas. As working-age people face few job prospects and find themselves imprisoned for engaging in illicit activities, those neighborhoods find themselves without their key wage-earning demographic. When people return to those neighborhoods after prison, they face even fewer prospects for legitimate employment, as few workplaces will hire those with criminal records. This produces a “churn” of people into and out of prisons and low-wage urban labor markets. Specific legal tactics have led to this situation in many states, namely the rise of mandatory sentencing and zero-tolerance laws that mandate long prison sentences for non-violent crimes. Broadly speaking, these studies show how mass imprisonment both relies upon and reproduces specific forms of precarious labor and household livelihoods. In a similar fashion, Joseph Nevins (2007) argues that current US immigration enforcement is bound up with a political economy that reaches back in time and beyond US boundaries. In particular, he traces how the deregulation of agricultural exports in Central America undermined smallholder farmers’ ability to live off coffee cultivation. As a result, farmers moved to cities and eventually to the United States. The production of an “immigration crisis” stemmed from, Nevins argues, the political economy of global agricultural trade, urban employment, transboundary migration. Thus, analyses of immigration enforcement practices, including detention, must take these successive structural changes into account.

To this end, I trace detention’s spatial practices to understand how US immigration detention policies contribute to the production of migrant

precarity. In particular, I show how immigration detention policies rely upon the US criminal justice system in specific ways, and I highlight how the criminalization of immigration has produced new forms of imprisonment. I then turn to specific spatial strategies of mobility control within the immigration detention system, and analyze the ways in which they destabilize networks of care. On the basis of this analysis, I return to the concept of precarity, and discuss how we can pry apart distinct, but intersecting, forms of precarious life in immigration detention.

## **2. Criminalization, illegalization, and disciplined mobility in US immigration detention**

Traditionally, the US criminal justice and immigration systems have been separate systems, the former being a system for adjudicating criminal law and the latter being a civil administrative process of admission, entry, and repatriation for noncitizens. In the last few years, new programs have brought these systems into direct contact, so that jails and federal prisons now serve to channel noncitizens into detention and, ICE presumes, deportation. These legal techniques build upon a shared infrastructure, however, in which growing immigration detention demands soaked up surplus prison space. In this section, I trace out these interconnections to better locate immigration detention in the “technical landscapes of social control” (Paasi 2009) supported by the criminal justice system.

## 2.1 Joining Criminal Justice and Immigration Detention

As of 2007, the United States imprisoned 2.39 million people in federal and state prisons and county jails, up from 1.29 million in 1992; per capita, the rate of incarceration rose from 501 to 758 per 100,000 residents (International Center for Prison Studies 2010). The US immigration detention system grew even more dramatically over the same period. In 1994, 6785 detention beds were used for noncitizens in civil immigration proceedings, which grew to 9,011 beds in 1996, 19,485 beds in 2000, and 33,400 in 2011 (Haddal and Siskin 2010, p. 12). Paradoxically, the crime rate leveled in 1980 and has subsequently dropped, but new approaches to mandatory sentencing, which limited judges discretion to release those convicted of drug and other nonviolent offenses, swelled the prisoner population (Gilmore 2007). This limitation of judicial discretion was expanded to the immigration system in 1996 when the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) came into effect. Side by side, these statistics appear to portray two growing confinement systems, which is often understood as a particularly American penchant for punitive responses to social problems and immigration policy.

What these statistics mask, however, are important regional differences in prison and detention expansion. As Ruth Gilmore (2007) describes, California was home to a particularly enthusiastic round of prison building in the 1980s and 1990s, where the prisoner population grew 500% between 1982 and 2000.

In Texas, a similar trend unfolded, but where California's expanded system remained publically owned, Texas' expansion relied heavily upon private prison corporations to build and operate its new prisons. As incarceration rates began to stabilize in the early 2000s, speculative private prison building (building before contracts to house prisoners were obtained) resulted in the overproduction of prison space around the United States. In many cases, these small-town prisons were built with public financing but were to be managed and operated by private companies (Perkinson 2010). When they remained empty, they produced significant financial burdens on already-struggling towns, and created pressures for new prisoners or detainees (e.g., Bonds 2009). For companies that owned facilities, this shift left companies like the Corrections Corporation of America (CCA) on the verge of bankruptcy in 2003.

In 2003, the Department of Homeland Security (DHS) was formed, reorganizing 26 agencies including immigration, border, and citizenship administrations. With unprecedented levels of funding earmarked for immigration, border, and counter-terrorism, immigration enforcement officials were able to apprehend, detain, and deport more noncitizens than before. As stated above, IIRIRA limited judicial discretion over immigration decisions, and it did so by mandating detention for noncitizens (documented or undocumented) with records of "aggravated felonies." In addition, IIRIRA expanded the range of deportable offenses. For some, this punitive approach to immigration indicates a "criminalization of immigration," and the use of



detention and deportation as a form of social control (Coleman 2007, de Genova 2002). As Teresa Miller (2003) has noted, however, the coupling of expanded administrative powers and the limitation of judicial discretion was common in the criminal justice system, as well. Parole boards, for example, decide how long prisoners will serve and decisions cannot be appealed to judges. For Miller, this expanded space of administrative decision-making, outside the court system, constitutes an “immigrationization of criminal justice.” That is, legal techniques developed in the immigration and criminal justice fields have been transferred to the other, in most cases rolling back rights and protections for the incarcerated.

In 2004 and 2005, the then-new ICE agencies changed mandatory detention rules, dubiously called “Catch and Remove” in reference to wildlife hunting, so that anyone caught within two-weeks of arrival and 100 miles of the US-Mexico border could be processed through the Expedited Removal program. Previously, this program was reserved for unauthorized border-crossers at ports of entry. Expedited Removal processing necessarily leads to detention, and it authorizes ICE officers to order deportation without migrants’ seeing a immigration judge. Thus, Expedited Removal’s expansion drew new groups of migrants into the detention system, and created the demand for more beds. ICE met this demand by contracting with a few key actors: private prison companies with empty facilities and county jails with empty beds. At its peak, the immigration detention system included over 300 facilities, and 240 of these

were mixed population jails and prisons, where immigration detainees were housed alongside pre-trial detainees and people doing time in the criminal justice system (Schriro 2009, p. 10). In some cases, counties leased beds to ICE at far above their daily cost, using immigration detainees to draw funding into flagging county jails. An internal report on the detention system found many of these facilities to be inappropriate for detainees, and the number of detention centers has since shrunk to around 250. While this relationship between immigration detention and county-level imprisonment has been reigned in to some extent, ICE has implemented a new policy that links the two systems in important ways.

The Secure Communities program, or SComm, requires police officers in almost all counties in the US to run noncitizens' fingerprints through immigration databases (US ICE 2012a). The current procedures work in tandem with Federal Bureau of Investigations (FBI) database checks, so that the FBI forwards noncitizen fingerprint information to DHS. If DHS finds a match with fingerprints in its database, it places a "detainer" on the noncitizen in question. The detainer requires local jails to keep people for an additional 48 hours for ICE interview. If, at the end of 48 hours, ICE does perform the interview, the person is released through normal bond or parole procedures (if applicable). Depending on the situation, the person may be charged and tried for the original arrest. If convicted, s/he serves time and is then transferred to ICE detention, where ICE will begin deportation proceedings. If the county does not charge the

noncitizen in question (in which case s/he would normally return to the community), ICE can still detain her/him for immigration violations. Since 2010, ICE has claimed that it uses a priority system for detention and deportation, which would allow those without charges--or with low-level charges--to be released (US ICE 2010). But the implementation of these policies has not been seen to bear out in practice (Transactions Records Access Clearinghouse 2013c). Thus, SComm uses the other policing practices to funnel noncitizens into the immigration detention system, expanding the points of contact between ICE and noncitizens in everyday life. More importantly, it normalizes the link between criminality and immigration enforcement as a matter of procedure.

At the same time that Expedited Removal was expanded to “close loopholes” of who could be detained and where, ICE also explicitly criminalized immigration violations. Operation Streamline is a program of automatic prosecution of unauthorized border crossers along the US-Mexico boundary. The program was initiated in 2005 as part of a wider effort to detain “Other than Mexicans” or (OTMs) caught crossing the border without authorization who could not be immediately returned to their countries of origin. (Mexicans caught at the border were immediately returned to Mexico). These migrants were most often released upon recognizance, a policy dubiously referred to as “Catch and Release” (see Martin 2012 on broader efforts to detain OTMs). Prior to Operation Streamline, the US Attorney’s Office retained discretion to prosecute

(or not) unauthorized border crossers, and reserved federal criminal prosecution for repeat offenders and those with significant criminal records. Streamline, however, *requires* federal prosecutors to charge and try unauthorized noncitizens for migration-related violations in federal criminal courts. Reports describe Streamline trials as processes in which 10 to 70 noncitizens can be prosecuted at once, and procedures differ by federal court judge. Operation Streamline trials utilize an expedited process that combines arraignment, plea and sentencing hearings. Noncitizens are given a maximum of one hour to meet with legal counsel prior to appearing in court. During their court appearance, the judge asks them if they are citizens of Mexico, if they have papers allowing them to enter the US, and if they entered the US without authorization. Sometimes the judge asks people individually and sometimes as a group (Lydgate 2010; Grassroots Leadership 2012; Borderlands Autonomous Collective 2012). These conditions mean that noncitizens are not afforded individual due process in their criminal trials, but are presumed to be guilty by group membership.

Operation Streamline “closes the loophole” available to OTMs in two ways. First, the program moves migrants that do not qualify for IIRIRA’s mandatory detention to the federal criminal justice system, where they will be confined in the pre-trial custody system (many of them not having the resources for bond). Second, *criminal* prosecutions and prison terms place noncitizens in IIRIRA’s “aggravated felony” category, making them not only deportable, but subject to

mandatory detention upon completing their sentences. For those charged with “reentry of deported alien” (08 USC 1326), conviction triggers a 10 year ban on entering the United States. The consequences of this shift have been clear. The total federal court caseload has risen 31.8% since 2008, and immigration-related charges now comprise around 57% of all prosecutions in the federal courts. DHS, which includes ICE and CBP, refers 64% of all federal prosecutions across the country (TRAC 2013b). As many critics have noted, the quick increase in caseloads have led to serious concerns over the process itself, as immigrants are charged, tried, and sentenced in groups of up to 80 people (Lydgate 2010).

While some noncitizens enter the federal prison system for long term sentences, the majority are incarcerated in Criminal Alien Requirement facilities that hold exclusively noncitizens. Much of this dedicated bedspace has been provided by private prison companies. These facilities do not provide services or family support equal to the rest of the federal prison system, and noncitizens are categorically excluded from minimum-security facilities and drug rehabilitation (Robertson et al., 2012). Thus, the apparent advantages of the criminal justice system over the civil immigration system (such as the right to a lawyer and due process protections) are systematically eroded for noncitizens in the federal criminal justice system.

The criminalization of immigration is not, then, solely symbolic, rather the civil immigration system and criminal justice systems have intersected in specific ways. In particular, the two systems share legal techniques, such as expanded administrative discretion to detain and release, facilities, and databases. And yet, federal criminal prosecution of immigration-related violations has led not to the incorporation of immigration into that system, but to the creation of a separate set of procedures and facilities *within the criminal justice system*. Operation Streamline uses highly questionable “due process” to classify noncitizens as aggravated felons, funneling them into mandatory detention and, subsequently, deportation. Without becoming one system, immigration and criminal justice procedures have been linked in strategic ways. Here, I want to focus on the spatial practices of detention, in particular, to highlight the ways in which the spatiality of confinement is deployed to policy transboundary mobility.

## 2.2 Disciplined Mobility in Detention

All US immigration detention centers are secure facilities. Detainee mobility is highly constrained within the centers, and visitation is closely regulated. Detained noncitizen adults are issued uniforms and are sorted into facilities’ low, medium, and high security zones, demarcated by the color of their jumpsuits. Movement between areas of the detention center is highly controlled. In facilities that have multiple security levels, detainees of different security levels must remain in their cells while other groups move through the

facility, be it for visitation, meals, or transport. This means that detainees can spend long periods confined to their cells during the day, regardless of their security level. Solitary confinement is widely used to both “protect” vulnerable people, such as gay, lesbian, and transgender people, and to discipline political organizers within detention centers. A few centers have relatively freer internal mobility inside the centers, such as the Berks County Family Care Shelter and T. Don Hutto Detention center, because they were designed to detain families. In these cases, however, zones of less-restricted mobility are nested within securitized boundaries that are fenced and patrolled (Martin 2012b). In their internal spatial orderings, immigration detention centers operate very much like their counterparts in the criminal justice system. A key difference, however, is that immigration detention is indefinite in the United States. This sense of indeterminacy has dramatic effects on detained persons’ mental health, as well as their families’.

Long-distance transfers have also been common. In 2007 and 2008, ICE transferred over 50% of detained adults at least once, and over 20% twice or more (TRAC 2008). Detainees are often transferred without notice, and until the Online Detainee Locator System was implemented in 2010, it was common to lose track of detainees for days after their transfer (Hiemstra 2013). Moreover, visitation policies have been set by detention center operators, and the identification requirements, hours, dress codes, and other regulations varied widely between facilities. For detainees in county jails, visitation follows the

facility policy, and visitors often speak to detained noncitizens through plexiglass barriers. Detained migrants and their families experience these visits as criminalizing, and in some cases detainees prefer their families not to visit (Martin 2011, 2012). The association of detention with prisons with criminality creates a powerful series of “collateral effects” (Moran 2013b) on family members in the US and abroad and on government agents and non-governmental service organizations (Gill 2009), as described above.

### 2.3 “Alternatives to Detention”

In addition to secured facilities, ICE retains custody over more than 17,000 noncitizens through Alternatives to Detention (ATD) programs, which include a combination of electronic monitoring (gps ankle bracelet), in-person and phone reporting, unannounced visits from immigration staff, curfews, and court appearance requirements. ICE contracts with BI Incorporated, owned by the private prison company GEO Group who also operates detention centers (Human Rights First 2013), to run two Intensive Supervision Appearance programs. “Full-service ISAP” includes case management, in which BI caseworkers give noncitizens information about local services. As critics have pointed out, they do not provide sufficient individual needs analysis, nor do they connect noncitizens with service organizations themselves (see Lutheran Immigrant and Refugee Services 2012, p. 31). “Technology-assisted ISAP” utilizes BI’s electronic monitors, while ICE retains direct supervision of noncitizens. Notably, migrants are eligible for full-service ISAP if they live



within 50-85 miles of 30 ICE offices, while technology-assisted ISAP is available at all ICE offices.

These ATD programs allow noncitizens to avoid confinement, but restrict mobility within their communities (Martin 2012b). For example, ankle monitors must be charged and this requires ATD participants to sit near an electrical socket for period of time each day. The bracelets are difficult to shower with, and pregnant women find them painful when their ankle swell. Others have reported stigmatization in their neighborhood because the monitors are the same type as those used in the criminal justice system. The existence of the monitor implies criminality, despite the fact that ICE uses them with populations who cannot be detained in secure facilities.<sup>1</sup> Furthermore, ICE uses ATD programs for noncitizens that are ineligible for detention, such as mothers with dependent children and asylum seekers, drawing *more* noncitizens into ICE custody rather than replacing detention beds (Lutheran Immigrant and Refugee Services 2012). ATD programs have, in effect, widened ICE surveillance over noncitizens in their own communities.

### **Conclusion: detention and the production of precariousness**

From local policing to deportation and return, detention practices work through a wide range of spatial relationships. For noncitizen communities and their

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<sup>1</sup> It should be noted that this practice is widely criticized as “net-widening” because it brings people into custody who should be released without supervision. See Lutheran Immigrant and Refugee Services 2012.

allies in the US, these have accumulated into a sense of siege. As Luis Fernandez writes,

...we can see that the strategy is to target all those things that make undocumented life possible: work, education, family life, health care, home, etc. The tactic of ‘enforcement through attrition,’ then, targets the essence of undocumented life, making it very difficult for undocumented people to meet their needs....So you begin to see the closing of all the possibilities of what it means to become an undocumented person. (Loyd 2012, p. 230)

US immigration detention practices are not a single strategy, as demonstrated above, but are nested within an institutional assemblage of legal tactics and procedures, transportation networks, and prison infrastructure. Immigration and criminal justice systems now link up with each other in ways that have changed the legal operation of immigration enforcement. In effect, Secure Communities and Operation Streamline work to *illegalize* noncitizens, to channel them into a system that will ban them from authorized presence for a decade. Detention centers, in turn, work to segregate noncitizen populations, to isolate them for inspection, and in doing so create the sense that they are a criminal population. For those detained and their families and communities outside, imprisonment and detention produce significant strains, both financially and emotionally. While deportation prevents the same kind of “churn” between disinvested areas and prisons that Peck and Theodore observe, immigration enforcement’s spatial tactics contribute to making work and daily life uncertain, anxious, and

precarious. Here I want to think more deeply about migrant precarity, to offer a way of prying apart the specific spatial practices that contribute to its production and how to politicize it.

For Judith Butler (2009), precarity is more than an issue of work conditions or legal status, rather these are functions of a deeper ontological condition. Butler distinguishes between a socio-politically produced *precarity* and ontological *precariousness*, the fundamentally social interdependence of being human. In her words, “precarity designates that politically induced condition in which certain populations suffer from failing social and economic networks of support and become differentially exposed to injury, violence, and death” (Butler 2009, p. 25) while “precariousness implies living socially, that is, the fact that one’s life is always in some sense in the hands of the other” (ibid., p. 14). Her goal is to provide philosophical grounding for a material critique of state violence, of the ways in which policies and categories make life unlivable. Butler’s call emerges from and resonates with wider field of scholarship interrogating the regulation of life and intimacy, especially feminist theorizations of care and Foucauldian analyses of biopower. Seeking to think through the spatiality of Butler’s approach, Harker argues that her “spatialized social ontology helps conceptualize how subjects are differentially exposed to precarity and the social work done by families (and other more-than-individual subjects) to sustain life in conditions of heightened exposure to violence, injury, and death” (2012, p. 861). For my purposes here, tracing intimate, familial, and affective relations--

and the ways in which these relations are exploited or rendered by state policies--provides a starting point for analyzing how immigration detention works across different spatial registers: bodies, intimacies, homes, legal cases, nation-state boundaries, everyday mobilities.

Building on Butler and Harker, I argue that immigration detention's specific spatiality produces migrant precarity by successively criminalizing, illegalizing, and forcibly remobilizing noncitizens. These practices exploit life's *precariousness*, in Butler's ontological sense, because they seek to make immigrant life unlivable, to undermine the relations of care through which people sustain themselves. Detention and imprisonment make visible the ways in which precariousness is produced by the spatial exploitation of our interdependence. Desires to earn a sufficient living, provide opportunities for children, or find safe haven are strategies to address life's inherent precarity by shoring up one's ability to provide opportunities for loved ones. While temporary work programs make use of this need for income to keep work dangerous and low-paying, immigration enforcement policies disrupt and reconfigure the intimate relationships on which people depend. Detention and prison systems may be legally distinct, but their shared spatialities of controlled mobility and isolation bear down on networks of care in much the same ways. As policies like Operation Streamline and Secure Communities make the link between those two confinement systems explicit, scholars and organizers alike must continue to attend to the common ways in which these confinement

regimes magnify ontological precarity through legal, political, economic, and social exclusion.

Butler would like us to go further, however. Analyzing precariousness' geographies should do more than liberal calls for equal individual rights, better representative processes, and better inclusion in society. Rather, the aim is to analyze how immigration (and military, border policing, and social) policies "maximize precariousness for others while minimizing precariousness for the power in question" (Butler 2009, p. 25), what has also been called "the geopolitics of vulnerability" (Martin 2011). In other words, the point is that these inequalities are *strategically institutionalized* and reproduced. The production of racialized inequality, in particular, has been a key part of the development of modern nation-states and biopolitical population management practices (see Foucault 1990, p. 149). Moreover, managing intimacy--sexual and familial--has long been a key component of social policy. The shift from social welfare policies to incapacitation and imprisonment in the US and elsewhere has shifted the burden of rehabilitation at the same time that social support for families has diminished. These policy changes sharpen previously existing inequalities, and as Gilmore (2007) has shown, these processes congeal in the prison sector, as urban and rural surplus labor meet in rural prison towns. Butler's challenge to immigrant and human rights advocates is to enact a political beyond liberal individualism, which mystifies life's inherent

interdependencies, and to enact a politics rooted in a recognition of the intimacy, care, and mutual aid.

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